

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ADRIAN ALMONTE,

Defendant.

)
)
)
)
)
)
)
)
)
)

CASE NO. 8:08CR282

ORDER

This matter is before the Court on the following: the motion to withdraw filed by defense counsel Ernest H. Addison, Jr. (Filing No. 65); and the Defendant's unopposed motion to continue filed by Thomas J. Monaghan (Filing No. 67). Mr. Monaghan has entered his appearance. (Filing No. 66.)

The Defendant pleaded guilty under a plea agreement in which the parties recommend, among other things, that the Defendant's base offense level be calculated as level 26 and that no role adjustment be made. The Revised PSR assigns base offense level 30 based on a higher drug quantity. The government has objected to the higher base offense level consistent with the plea agreement. (Filing No. 64.) The deadline for submitting objections to the PSR and motions for downward departure is June 18, 2009. (Filing No. 54, ¶ 6.) Based on the government's objections, the Court is likely to follow its usual practice and uphold the parties' plea agreement in its tentative findings.

Mr. Monaghan asks to continue the sentencing date for 60 days so that he can: review the files, discovery and PSR; meet with the prosecutor and the probation officer; and review the Defendant's history and family relationships to prepare for sentencing. Mr. Monaghan represents that a continuance is "reasonable and necessary for effective preparation based on due diligence of counsel and to avoid a miscarriage of justice."

(Filing No. 67.) However, Mr. Monaghan has not moved to continue the June 18, 2009, deadline for objections to the PSR and motions for downward departure, variance, etc. The Defendant hired Mr. Monaghan, and Mr. Monaghan accepted this case, after the sentencing schedule was established.¹ It is likely that the Court will grant the government's objections and uphold the plea agreement in the tentative findings that will be issued on or about June 29, 2009. Should Mr. Monaghan wish to file a motion for downward departure or other motion, he has until June 18, 2009, to do so unless the Court continues that deadline. The Court concludes that continuing the sentencing hearing for 60 days is not "reasonable and necessary for effective preparation based on due diligence of counsel" or to "avoid a miscarriage of justice." Therefore, while the motion to withdraw is granted, the motion to continue is denied.

IT IS ORDERED:

1. The motion to withdraw (Filing No. 65) is granted; and
2. The Defendant's motion to continue (Filing No. 67) is denied.

DATED this 9th day of June, 2009.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge

¹The sentencing schedule was entered on April 15, 2009.